

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 TWELFTH STREET, SW**  
**WASHINGTON, DC 20554**

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Vicksburg Community Radio  
4223 I-20 Frontage RD  
Apt. H2  
Vicksburg, MS 39183

Re: WDON-LP, Vicksburg, MS  
Facility ID No. 196189  
Vicksburg Community Radio  
File No. BPL-20140902ACH

Dear Applicant:

This letter refers to the above-captioned application for a minor change to a licensed facility. WDON-LP also requests waiver of the minor change relocation distance provisions of 47 C.F.R. § 73.870. For the reasons stated below, we deny WDON-LP's waiver request and dismiss the application.

#### **Waiver Request**

An engineering study of the application reveals that the modification proposes to relocate the transmitter 8.8 kilometers away from that currently authorized. The *Second Report & Order* in MM Docket 99-25 established the definition of a "minor change" as it applies to LPFM applications.<sup>1</sup> The Commission stated that minor change applications would be limited to those specifying changes in site location of 5.6 kilometers or less. Thus, the application specifying an 8.8 kilometer change in site location violates 47 C.F.R. § 73.870. WDON-LP recognizes this violation and requests waiver of the minor change distance provisions of § 73.870.

In support of the waiver request, the applicant states that they cannot use the current site as a result of interference to the data signaling equipment located on the tower. WDON-LP has not been able to find an affordable site within the 5.6 kilometers limit.

#### **Discussion**

The record before us does not present unique circumstances sufficient to justify grant of the waiver request. WDON-LP has not cited any cases where the Commission has waived § 73.870 for similar reasons. The financial argument presented by WDON-LP is not compelling. Furthermore, the Commission generally does not waive its rules for financial reasons. Accordingly, we conclude that waiver of § 73.870 is not warranted in this case.

When evaluating a request to relocate beyond that which is allowed as a minor change, we typically look at the availability of registered antenna structures within the allowed 5.6 kilometer radius. In this instance, a study using a 6 kilometer radius distance produced fifteen possible antenna locations. The registered structure search does not indicate the only possible locations, but only serves as a guide for the

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<sup>1</sup> See *In the Matter of Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 05-75, (rel. March 17, 2005).

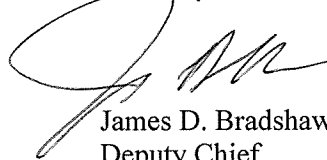
staff to determine the validity of a waiver request. LPFM stations have much more flexible siting alternatives available when compared to full service stations. LPFM station antennas are not required to locate on a registered structure and quite often are located on buildings, poles, and other non-registered structures. Therefore, it is our determination that WDON-LP has not provided sufficient analysis within the allowed minor change distance area to show the unavailability of compliant locations.

## Conclusion

The Commission's rules may be waived only for good cause shown.<sup>2</sup> An applicant seeking a rule waiver has the burden to plead with particularity the facts and circumstances that warrant such action.<sup>3</sup> The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"<sup>4</sup> and must support its waiver request with a compelling showing.<sup>5</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>6</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>7</sup> However, waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>8</sup> WDON-LP's request fails to present good cause for waiver of § 73.870. WDON-LP has not shown sufficiently unique "special" circumstances, *i.e.*, rare and exceptional circumstances beyond its control to justify a waiver of § 73.870. Finally, we find that the facts and circumstances set forth in the justification are insufficient to establish that granting waiver of § 73.870 would be in the public interest.

Thus the request for waiver of 47 C.F.R. § 73.870 IS HEREBY DENIED and application BPL-20140902ACH IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



James D. Bradshaw  
Deputy Chief  
Audio Division  
Media Bureau

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<sup>2</sup> 47 C.F.R. § 1.3.

<sup>3</sup> See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

<sup>4</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) ("*WAIT Radio*"). See also *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

<sup>5</sup> *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

<sup>6</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

<sup>7</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>8</sup> *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) ("*Network IP*"); *Northeast Cellular*, 897 F.2d at 1166.